

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY**

VICTOR H. AUSTIN,

Petitioner,

v.

CIVIL ACTION NO. 5:21-cv-00054

D.L. YOUNG, Warden,

Respondent.

ORDER

Pending is Petitioner's Petition for a Writ of Habeas Corpus [Doc. 1], filed January 21, 2021. This action was previously referred to the Honorable Dwane L. Tinsley, United States Magistrate Judge, for submission of proposed findings and a recommendation ("PF&R"). On April 16, 2021, Magistrate Judge Tinsley directed the Respondent to answer Petitioner's allegations in his Petition and to show cause why the writ of habeas corpus should not be granted. [Doc. 5]. On April 26, 2021, the Respondent filed his response. [Doc. 6]. On September 23, 2021, the Respondent filed a Motion to Dismiss. [Doc. 9]. On December 2, 2021, Magistrate Judge Tinsley filed his PF&R. [Doc. 10]. Magistrate Judge Tinsley recommended that the Court grant Respondent's Motion to Dismiss and deny Petitioner's Petition for a Writ of Habeas Corpus.

The Court need not review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140 (1985); *see also* 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations *to which objection is made.*" (emphasis added)). Failure to file timely objections constitutes a waiver of de novo review and the Petitioner's


right to appeal the Court's order. *See* 28 U.S.C. § 636(b)(1); *see also United States v. De Leon-Ramirez*, 925 F.3d 177, 181 (4th Cir. 2019) (Parties may not typically “appeal a magistrate judge’s findings that were not objected to below, as § 636(b) doesn’t require de novo review absent objection.”); *Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989). Further, the Court need not conduct de novo review when a party “makes general and conclusory objections that do not direct the Court to a specific error in the magistrate’s proposed findings and recommendations.” *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). Objections in this case were due on December 16, 2021. No objections were filed.

Accordingly, the Court **ADOPTS** the PF&R [**Doc. 10**], **GRANTS** Respondent’s Motion to Dismiss [**Doc. 9**], **DISMISSES** the Petitioner’s Petition for a Writ of Habeas Corpus [**Doc. 1**], and **DISMISSES** the matter.

The Court directs the Clerk to transmit a copy of this Order to any counsel of record and any unrepresented party.

ENTER: January 31, 2022




Frank W. Volk
United States District Judge